



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 15, 2023

IN THE MATTER OF:

Appeal Board No. 628863

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 628862 and 628863, the claimant appeals from the decisions of the Administrative Law Judge filed April 13, 2023, insofar as they sustained initial determination holding the claimant ineligible to receive benefits, effective July 25, 2022 through July 31, 2022, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and sustained the initial determinations holding the claimant ineligible to receive benefits, effective June 6, 2022 through July 17, 2022, and August 1, 2022 through December 4, 2022, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Further evidence is needed to decide the remaining issues of the claimant's compliance with certification and registration requirements.

Specifically, given the claimant's testimony that he stopped certifying after he received a communication from the Department of Labor advising him that his claim was "not payable," and since such information might be considered misinformation on which the claimant relied, the claimant is directed to produce the letter he testified that he received from the Department. This letter shall be received into evidence after the appropriate confrontation and opportunity for objection.

In addition, in light of the claimant's explanation, provided by the claimant for the first time at the hearing, the Commissioner of Labor shall be represented at the remand hearing, and shall be given the opportunity to address the claimant's contention. The Commissioner's representative is directed to produce a copy of any determination that was made in connection with the claimant's May 4, 2022 claim for benefits including, but not limited to, any determination regarding the claimant's eligibility, and any monetary determination mailed to the claimant.

Since the claimant testified that he stopped certifying because he believed he was not eligible, which belief was supported by the fact that he did not receive benefits from the Department for the weeks in May 2022 when he did properly certify, the Commissioner's representative should produce a witness prepared to explain why the claimant's benefits from those weeks in May were not released until December, 2022, as reflected on the Claim History, received into evidence at the March 22, 2023 hearing, as Hearing Exhibit 3.

In addition, the claimant should be questioned regarding his receipt of the Claimant Handbook, and the contents of the Handbook, including the requirement that a claimant is to certify for benefits for each week he is unemployed and wishes to receive benefits, and the instruction that a claimant is to continue to certify for benefits even if he has initially been found ineligible to receive benefits. Towards this end, the claimant's UI Web Application, in the file at pages 39 through 41, should be received into evidence, as well as the relevant pages of the Handbook. Those pages include, but are not limited to, Chapters 6 and 7 to the extent they include instructions for continuing to certify weekly, even when a claimant is found ineligible and is awaiting a hearing.

Further, in light of the claimant's testimony that he continuously called the Department of Labor during the periods at issue, sometimes 20 times a week, but was never able to speak with anyone, the claimant shall be given an additional-and final-opportunity to produce telephone records to establish the calls he made to the Department during the period at issue, from June 5, 2022 through December 4, 2022. The claimant shall also be questioned regarding why he did not indicate his numerous unsuccessful attempts to contact the Department when he was providing information to the Department representative who was assisting with his "Failure to Certify Questionnaire," which was received into evidence as Hearing Exhibit 5.

The Department of Labor's "Call History Report" for the period beginning May 1, 2022 through December 31, 2022, in the file at pages 23 through 37, shall be received into evidence after the appropriate confrontation and opportunity for objection. The Commissioner's representative should be prepared to authenticate and explain the contents of this document.

The Commissioner of Labor representative should also be prepared to produce testimony and other evidence to establish whether the Department was experiencing technological or other problems with its telephone system during the period at issue, and address the claimant's testimony regarding the problems he was having trying to certify online and by telephone during this time.

The parties are placed on notice that failure to produce the evidence directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and finding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations of failure to certify and failure to register, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the appealed issues only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the claimant's ineligibility, effective July 25, 2022 through July 31, 2022, on the basis that the claimant failed to certify for the benefit period within

the seven-day period for such certification; and effective June 6, 2022 through July 17, 2022, and August 1, 2022 through December 4, 2022, on the basis that the claimant did not comply with registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER